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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/509,195	09/24/2004	Leif Christensen	30120/32007	7847
4743 7590 11/02/2007 MARSHALL, GERSTEIN & BORUN LLP 233 S. WACKER DRIVE, SUITE 6300 SEARS TOWER CHICAGO, IL 60606			EXAMINER PALO, FRANCIS T	
			ART UNIT 3644	PAPER NUMBER
			MAIL DATE 11/02/2007	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/509,195	Applicant(s) CHRISTENSEN, LEIF	
	Examiner Francis T. Palo	Art Unit 3644	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 22 August 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 15, 16, 18 and 19 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 15, 16, 18 and 19 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 24 September 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Amendment / Arguments

Applicant's arguments filed 8/22/07 have been fully considered but they are not persuasive.

Applicant submits that Walker '807 fails to anticipate claim-15 **as amended**, in that Walker does not disclose a driving gate (15) for driving animals along the corridor (10) to the side gate (presumably the open division gate (12) as recited in the claim and depicted in applicant's figure), as Walker teaches the animals are driven to the side gate via a stockman.

Applicant further submits that the pusher plate (18) of Walker is slow and inefficient, and to modify Walker by removing the staggered walls (figure-1; 5 and 6) would render Walker inoperable for its intended purpose of preventing animals from seeing along the entire length of the corridor section (which is taught as being less stressful on the animals; the view that is).

Applicant concludes that no prima facie case of obviousness can be based, even in part, on Walker.

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The examiner respectfully submits that it would have been obvious to one of ordinary skill in the art at the time the invention was made, to have modified the system of Walker with a traveling elevating gate, as now claimed and as well-known in the art; as where a claimed improvement on a device or apparatus is no more than "the simple substitution of one known element for another or the mere application of a known technique to a piece of prior art ready for improvement," the claim is unpatentable under 35 U.S.C. 103(a). Ex Parte Smith, 83 USPQ.2d 1509, 1518-19 (BPAI, 2007) (citing KSR v. Teleflex, 127 S.Ct. 1727, 1740, 82 USPQ2d 1385, 1396 (2007)).

The examiner concludes that further such modification as aforementioned would not render inoperable the system of Walker, irrespective of the intended use argued by applicant.

Claim Objections

The claims are objected to because they include reference characters, which are enclosed within parentheses.

The reference characters corresponding to elements recited in the detailed description of the drawings should be removed from the claims, as it is not accepted practice for claim language, as the parenthetical reference does not serve to distinguish the limitation(s) from the prior art structure. The examiner has however, obviously given weight to the characters.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 15, 16, 18 and 19 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The amended recitation of "a traveling elevating gate" in step-(c) of claim-15, does not appear to be enabled in the specification, as at page-5 (line-13), the gate (15) is disclosed to travel between the entrance end of the corridor and an end position at the division gate (12), rather than into a transfer section (16) from the exit end as claimed. Likewise the recitation "by one of a gate device" also appears to lack enablement, and it is unclear how the traveling sliding gate (14), which is taught as stopping in front of exit gate (13) is capable of travel into a transfer section (16) from the exit end as claimed.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 15, 16, 18 and 19 are rejected under 35 U.S.C. 103(a),
as being unpatentable over **Walker** (EP 920,807) 1999,
in view of **Joergensen** (US 5,009,191) 1991.

Regarding amended independent **claim-15**:

Walker '807 teaches the method of the instant claim except for the amended claim language.

Specifically, Walker teaches driving animals in an oblong corridor section (depicted by darkened walls in figures-4) from an entrance end (left open end of the corridor) towards an exit end (43) and past an open division gate (7), which is placed between the entrance end and the exit end; Walker does not rely upon a driving gate for driving animals as now amended, but rather teaches the animals will naturally walk into the first compartment because of their inquisitive nature (col.-4, line-46 thereabout).

Joergensen '191 teaches a system in figure-1 not unlike applicants system depicted in the instant invention figure-1, in that both systems teach a driving in passage (7 and 1 respectively) and functionally equivalent pen entrance means (6 and 11 respectively); most notably, both systems teach a traveling elevated **driving gate** (10 and 15 respectively) as amended, the driving gate of Joergensen further having the capability to traverse the entire oblong corridor length from entrance to exit end, whereas the instant driving gate (15) is limited to travel up to the first division gate (12) as depicted in the instant invention figure-1.

It is submitted that it would have been obvious to one of ordinary skill in the art at the time the invention was made, to have modified the system of Walker with a traveling elevating gate, as now claimed via amendment, and as well-known in the art, such as taught by Joergensen, as discussed above in the preceding paragraph; as where a claimed improvement on a device or apparatus is no more than "the simple substitution of one known element for another or the mere application of a known technique to a piece of prior art ready for improvement," the claim is unpatentable under 35 U.S.C. 103(a). Ex Parte Smith, 83 USPQ.2d 1509, 1518-19 (BPAI, 2007) (citing KSR v. Teleflex, 127 S.Ct. 1727, 1740, 82 USPQ2d 1385, 1396 (2007)).

Accordingly, Applicant claims a combination that only unites old elements with no change in the respective functions of those old elements, and the combination of those elements yields predictable results;

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absent evidence that the modifications necessary to effect the combination of elements is uniquely challenging or difficult for one of ordinary skill in the art, the claim is unpatentable as obvious under 35 U.S.C. 103(a). *Ex Parte Smith*, 83 USPQ.2d at 1518-19 (BPAI, 2007) (citing *KSR*, 127 S.Ct. at 1740, 82 USPQ2d at 1396).

Furthermore, since the applicant has submitted no persuasive evidence that the combination of the above elements is uniquely challenging or difficult for one of ordinary skill in the art, the claim is unpatentable as obvious under 35 U.S.C. 103(a), because it is no more than the predictable use of prior art elements according to their established functions resulting in the simple substitution of one known element for another or the mere application of a known technique to a piece of prior art ready for improvement.

Continuing with the rejection of step-(a) in the instant claim, the driving gate of Walker as modified by Joergensen, is movable in the longitudinal direction of the corridor section as previously discussed above and as now claimed, and the division gate (7) of Walker is placed as claimed for the intended use as recited in the instant claim.

As regards steps (b and d-f), the limitations and recitations therein the claim having not been traversed in the arguments filed 8/22/07 are maintained as submitted in the office action mailed 5/31/07 and incorporated herein by reference only, as only the amended language need be addressed.

As regards amended step-(c) and in light of the 35 U.S.C. 112 rejection above, Walker teaches a gate device (8) as broadly claimed or a traveling sliding gate (8/19) as claimed, movable in the corridor area (40/41) from a position at the exit end into a transfer section (41) as claimed.

Regarding claims 16 and 18:

The discussion above regarding claim-15 is relied upon.

The rejections of the instant claims is maintained as submitted in the office action mailed 5/31/07 and incorporated herein by reference only as they are a matter of record and have not been argued in the response filed 8/22/07.

Regarding amended claim-19:

The discussion above regarding claim-15 is relied upon.

Joergensen as discussed above in the rejection of claim-15 teaches an entrance gate (6) analogous to the entrance gate recited in the instant claim.

It would have been obvious to one of ordinary skill in the art at the time the invention was made, to have modified the system of Walker as claimed and as taught by Joergensen with an entrance gate, as further such modification is merely "the simple substitution of one known element for another or the mere application of a known technique to a piece of prior art ready for improvement", as discussed above in the rejection of claim-15.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Francis T. Palo whose telephone number is 571-272-6907. The examiner can normally be reached on M-Tu., Th.-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Teri Luu can be reached on 571-272-7045. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Francis T. Palo

Francis T. Palo
Primary Examiner
Art Unit 3644